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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 991.

ALFONSO SPINELLI,

Libellant-Petitioner,

against

ISTHMIAN STEAMSHIP COMPANY, a corporation,

Respondent,

against

INTERNATIONAL TERMINAL OPERATING CO., INC.,

Respondent.

BRIEF OF RESPONDENT, ISTHMIAN STEAMSHIP COMPANY, IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO FILE A SECOND PETITION FOR REHEARING OF HIS PETITION FOR WRIT OF CERTIORARI.

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TABLE OF CONTENTS.

	PAGE
POINT I—Petitioner's motion is an obvious attempt to circumvent Supreme Court Rule 58(4) which proscribes the filing of consecutive petitions	1
POINT II—Absent most unusual developments and compelling reasons therefor, the court should not reverse itself by granting a rehearing and issuing a writ of certiorari	2
CONCLUSION	4

Table of Cases.

	PAGE
Ferrante v. *Swedish American Lines*, 331 F. 2d 571 (1964)	2, 3
Mitchell v. *Trawler Racer*, 362 U. S. 539 (1960)	4
Scott v. *Isbrandtsen Co.*, 327 F. 2d 113 (4th Cir. 1964)	3
Thompson v. *Calmar Steamship Corporation*, 331 F. 2d 657 (3rd Cir. 1964)	3

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POINT I.

PETITIONER'S MOTION IS AN OBVIOUS ATTEMPT TO CIRCUMVENT SUPREME COURT RULE 58(4) WHICH PROSCRIBES THE FILING OF CONSECUTIVE PETITIONS.

It is the gist of petitioner's motion that although he is proscribed by Rule 58 from filing consecutive petitions for rehearing, nevertheless, inasmuch as a petition for certi-

orari has been filed in the case of *Ferrante* v. *Swedish American Lines*, 331 F. 2d 571 (1964) (No. 275, October Term, 1964), this should be sufficient reason for the Court to overlook the Rule. Petitioner is making a third attempt at obtaining certiorari on the very same alleged conflicts that he urged in his previous attempts.

It is not denied that the Court has the power to rescind its previous denial for a writ of certiorari. However, such recision should be made only under the most unusual circumstances and for the most compelling of reasons, such as a supervening case decided by one Court of Appeals which is clearly contrary to the law as stated in a different Court of Appeals, or as decreed by the Supreme Court, which circumstances or reasons do not exist herein, and not decisions already brought to the attention of the Court in previous attempts.

Petitioner contends that there is a conflict between the Court of Appeals for the Third Circuit as evidenced by the *Ferrante* case and the Court of Appeals for the Second Circuit as evidenced by the instant case. Just because petitioner alleges a conflict does not make it so. Each case was decided on its own facts.

POINT II.

ABSENT MOST UNUSUAL DEVELOPMENTS AND COMPELLING REASONS THEREFOR, THE COURT SHOULD NOT REVERSE ITSELF BY GRANTING A REHEARING AND ISSUING A WRIT OF CERTIORARI.

The original petition for a writ of certiorari was denied on May 18th, 1964. Thereafter, on June 22nd, 1964, the Court denied the petition for a rehearing.

In support of his third petition, petitioner brings nothing new to the Court's attention. There have been no new or unusual developments in the law in any of the Circuit Courts since this Court denied the original petition. Furthermore, the cases advanced by petitioner have all been brought to the Court's attention on previous occasions. *Scott* v. *Isbrandtsen Co.*, 327 F. 2d 113 (4th Cir. 1964) has been called to the Court's attention on four (4) occasions[1]; *Ferrante* v. *Swedish American Lines*, 331 F. 2d 571 (1964) has been brought to the attention of this Court by petitioner three (3) times[2], and *Thompson* v. *Calmar Steamship Corporation*, 331 F. 2d 657 (3rd Cir. 1964), has been brought to the Court's attention once before[3].

Moreover, respondent's brief in opposition to the petition for a writ of certiorari distinguished both *Ferrante* and *Scott*. The *Thompson* case is also distinguishable. *Thompson* presented a *factual* issue which was decided adversely to the shipowner. *Spinelli*, too, presented a *factual* issue decided in favor of the shipowner.

Of course, this Court has power to review the *Ferrante* case on the ground that it was improperly decided by the Court of Appeals for the Third Circuit. However, inasmuch as this case was properly decided by the Courts below, and because this Court has twice refused to grant

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[1] Original petition, pp. 10-13;
Letter of April 20, 1964, to the Clerk by petitioner's counsel;
Reply by petitioner to briefs of respondents, p. 2;
Petition for rehearing of order denying petition for writ of certiorari, p. 2;

[2] Letter of April 20, 1964, to the Clerk by petitioner's counsel;
Reply by petitioner to briefs of respondents, p. 2;
Petition for rehearing of order denying petition for writ of certiorari, p. 2;

[3] Petition for rehearing of order denying petition for writ of certiorari, p. 2;

a writ of certiorari, the findings of the Courts below that the vessel and its equipment were reasonably fit for their intended purposes, in accordance with the teachings laid down by *Mitchell* v. *Trawler Racer*, 362 U. S. 539 (1960), should not be disturbed.

Conclusion.

Since there is no merit to the motion, no important question of law presented to the Court, and the reasons for granting rehearing are so insufficient and uncompelling, the relief sought by petitioner should be denied and the matter brought to rest.

Respectfully Submitted.

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Isthmian Steamship Company.

Charles N. Fiddler,
Of Counsel.